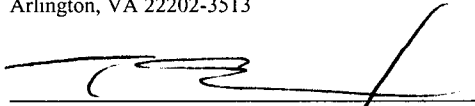


**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 76/295,515
Published in the Official Gazette on June 18, 2002

05-03-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

UNIVERSAL CITY STUDIOS, INC., Opposer, v. VALEN BROST, Applicant.	Opposition No. 153,683 I hereby certify that on April 19, 2004, this paper is being deposited with the U.S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. <u>34524977 3498</u> for delivery to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513  Tonya Swix
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**APPLICANT'S OPPOSITION TO OPPOSER'S MOTION
FOR LEAVE TO AMEND ITS NOTICE OF OPPOSITION**

The Applicant hereby opposes the Opposer's Motion for Leave to Amend its Notice of Opposition. This Opposition is based upon the pleadings in this action, the attached brief in opposition, and such other arguments and evidence as may be presented to the Board with respect to this Motion.

OPPOSITION ARGUMENTS

Opposer has not demonstrated any valid justifications to cause delay to this Opposition Proceeding. Discovery in this matter was closed on February 15, 2004, and Opposer's requested amendments will cause prejudice to Applicant's ability to defend against the proposed claims. Applicant would require additional discovery on the issues raised by the proposed amendments, and Applicant's inability to conduct additional discovery would seriously prejudice the Applicant. Therefore, the Motion should be denied.

At issue on a Motion for Leave to Amend is whether "justice requires" the amendment within the meaning of Fed. R. Civ. P. 15(a). The Board uses the following factors when determining whether the leave

to amend should be granted: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; and (4) futility of amendment. *Trek Bicycle Corporation v. Styletrek Limited*, 64 U.S.P.Q.2d 1540,1541 (T.T.A.B. 2001). The primary factors at issue in this Opposition Proceeding are delay and prejudice, and these factors without question require the denial of Opposer's Motion.

1. Delay

The discovery period has come and gone. While it is true that Opposer deposed Applicant after the close of discovery (due to scheduling conflicts), that does not excuse Opposer's delay in investigating any and all potential issues contained in this Opposition during the discovery period. The parties had six months to conduct discovery, and explore any and all issues stemming from this Opposition through written discovery. Opposer's failure to address Applicant's commercial use and ownership of the "Universal Toys" mark, and any related fraud claims, is not justification to amend the pleadings after the close of discovery. Opposer's written discovery requests failed to address any of the issues presented in its Motion for Leave to Amend its Notice of Opposition. Had Opposer been diligent in its discovery pursuits, an amendment after the close of discovery would not have been necessary. Therefore, Applicant should not be delayed due to Opposer's failure to conduct thorough discovery. There is no excuse for Opposer's delay in pursuing these claims since the Opposer waited until after the conclusion of discovery to explore issues relating to Applicant's use in commerce, ownership and fraud.

Applicant's inability to defend against the proposed amendments would cause massive prejudice, especially since Applicant is accused of fraud. A discovery extension would be required to accommodate Opposer's amendments, failure to extend discovery would severely prejudice Applicant. Opposer claims that no additional discovery would be necessary since Applicant could defend the Amended Notice of Opposition without additional discovery, however, this claim is without basis. The additional claims will

require a line of discovery that would unnecessarily cause undue delay in this matter.

2. Prejudice

The proposed amendments will cause substantial delay to this proceeding. The Amended Notice of Opposition will force the Applicant to defend itself against the new claims, employing new defenses. While the Applicant contends that the Opposer's proposed amendments are false, the Applicant will still be required to defend himself against the baseless allegations. New theories at this stage of the Opposition will inevitably alter the Applicant's current stance in the Opposition Proceeding, adding more time and expense for the Applicant. Therefore, the circumstances are highly prejudicial to the Applicant.

If the Applicant had known of Opposer's claims regarding the failure to use the mark in commerce, lack of ownership and fraud claims during the discovery period, Applicant could have taken substantive discovery on these issues and subpoenaed relevant documents for his defenses. At present, Applicant is completely barred from taking any additional depositions, serving any written discovery and subpoenaing any documents concerning these issues. Applicant's inability to defend against the Opposer's proposed amendments would cause massive prejudice to the Applicant. The prejudice would be substantial and is another compelling basis for the denial of Opposer's Motion.

CONCLUSION

Based on the foregoing, the Applicant requests that Opposer's Motion for Leave to Amend Notice of Opposition be denied.

Dated this 19th day of April, 2004.

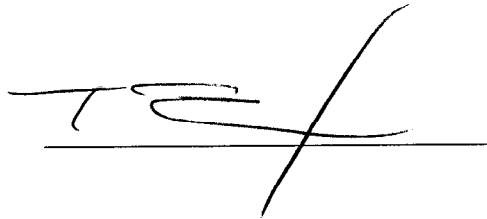
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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2004, I served the foregoing **Applicant's Opposition to Motion for Leave to Amend Notice of Opposition** on the applicant by mailing a true copy thereof by first class mail, postage prepaid, addressed to Opposer's counsel as follows:

Joan Kupersmith Larkin
Christopher C. Larkin
2029 Century Park East, Suite 3300
Los Angeles, CA 90067-3063

Dated this 19th day of April, 2004.

A handwritten signature in black ink, appearing to read "TE", is written over a horizontal line. A long, diagonal stroke crosses the line and the signature from the bottom right towards the top left.

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April 19, 2004

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Re: Universal City Studios, Inc. v Valen Brost
Applicant's Opposition to Opposer's Motion for Leave
to Amend its Notice of Opposition

Dear Commissioner:

Enclosed please find the original and two copies of the above-referenced Motion.
Please file and send back a stamped file copy to Watson Rounds in the self-addressed,
stamped envelope.

Thank you.

Sincerely,


Tonya Swix
Assistant to Kenneth N. Caldwell, Esq.
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